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Canada, Wartime Information Board

CANADA and
INTERNATIONAL
CIVIL AVIATION

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INTRODUCTION

1. Of recent months Canada has played a leading role in the formulation of international civil aviation policy. Canadian government representatives have participated in an international conference on civil aviation in Chicago, in conversations with representatives of the other nations of the Commonwealth in Montreal, and in negotiations with representatives of the United States in New York to discuss new arrangements for air services connecting Canada and the United States. This booklet is a report on these discussions in the order in which they took place.

CANADA *and* INTERNATIONAL CIVIL AVIATION

A. THE BACKGROUND

(1) Canadian Policy 1942-43

2. By the spring of 1942 it was apparent that civil air transport would have a large and important role to fill in international relations, and officials of the Canadian government were directed to devote their attention to the problems that must arise in the course of achieving satisfactory international cooperation. The first public statement from the government was given on April 2nd, 1943, in the House of Commons, when the Prime Minister made it clear that Canadian policy would be one of international cooperation and collaboration, and assured support for whatever policy seemed best calculated to serve not only the immediate national interests of Canada, but its over-riding interest in the establishment of an international order which would prevent the outbreak of another world war.

3. Subsequently Canada participated in Commonwealth conversations in London in October, 1943. The Canadian representatives were gratified to find that other nations of the Commonwealth not only had the same objectives in mind for international aviation policy, but took a similar view of the approach which might be made toward settlement of its problems.

(2) The First Canadian Draft Convention 1944

4. The Minister of Munitions and Supply, the Honourable C. D. Howe, presented to the House of Commons on March 17th, 1944,

a draft convention for the establishment of an international authority to deal with civil air matters. This convention went far to meet the difficulties that had already been experienced in the prewar years as well as the new problems growing out of war-time developments and changes. At that time Mr. Howe said:

“Some countries refused to permit airlines to cross the air space above their territory, necessitating costly detours. Others refused landing rights, as well as transit rights. The necessity for hard and persistent bilateral bargaining resulted, especially in Europe, in the establishment of so many competing national services that air transport became highly uneconomic, and lines were heavily subsidized at the expense of national taxpayers.

Behind much of this friction lay considerations of national prestige, but more especially of national security. Civil air transport fleets and civil aircraft industries represent a war potential, a reserve both of personnel and of industrial capacity which is all-important in time of war. The truth of this has been obvious in the present conflict. The emphasis in the prewar period upon security aspects of civil air transport was therefore natural and goes far to explain the failure of nations at that time to agree upon a method of effective international control of international air services. Because of the rapid development of aviation since the outbreak of war the international rivalries which would develop in the future after the conclusion of hostilities would be even sharper than those of the past, unless some improvement is effected.”

5. The Canadian draft convention was designed to meet this situation, providing for a multilateral granting of freedoms of the air, together with the establishment of an international authority with power to supervise international air transport in order to prevent misuse of these freedoms of the air. Subsequently Canada had an opportunity of discussing these proposals with representatives of other governments; these discussions made it possible to

revise the draft convention. In particular it was improved by adding principles which would guide the international authority in its control of rates and of services.

(3) The Summoning of the Chicago Conference

6. Meanwhile, as the year 1944 progressed and as the war took a turn for the better, it became apparent that a time was rapidly approaching when some nations would be desirous of initiating new international air services on a regular commercial basis. Not all, however, were equally favourably placed for the commencement of air services. Numerous countries had suffered heavily from the war and could not look forward to any early development or expansion of their international air services. Others had so concentrated on certain phases of war production that they were in a poor position in respect of equipment.

7. The Canadian government held the opinion that before new international air services were initiated by those countries which were in a position to move, an exchange of views should take place between at least the countries particularly interested in air transport, in regard to the international organization required to deal with air matters after the war. Otherwise a reversion to hard and bitter bilateral bargaining might begin, while nations not advantageously placed for the early initiation of services would feel that their future development had been handicapped. Canada's opinion in this respect was made known to the United States. The government of the United Kingdom, holding similar views, made similar representations. The United States government thereupon invited the United Nations together with associated and neutral states to attend a conference in Chicago on November 1st, 1944.

B. COMMONWEALTH DISCUSSIONS IN MONTREAL

8. For some time the desirability of further Commonwealth discussions on aviation had been under consideration. The meeting in Chicago afforded a convenient opportunity for these discussions,

which accordingly took place in Montreal immediately preceding the Chicago conference. There was also a brief Commonwealth gathering again in the same city immediately after the international conference. A great deal of the discussion during the first meetings in Montreal dealt with problems of international organization and had a direct bearing upon the subsequent discussions in Chicago. As such it is of no continuing interest. The meeting did, however, deal with certain issues of particular interest to members of the Commonwealth relating to air connections between the various regions of the Commonwealth. In this field considerable progress was made.

9. Canada's interest in three international air services has been indicated in earlier statements. These are:

A route across the North Atlantic;
A route to the West Indies and Latin America;
Canadian participation in a Pacific route.

10. The basis upon which Canada intended to proceed had already been brought forward in the Commonwealth conversations in London, October, 1943; namely, that in services connecting the various parts of the Commonwealth, each member should operate the services or sections of services which originated in its own territory and that out of these cooperative efforts a broad pattern of connecting links joining the areas of the Commonwealth would emerge.

11. As a result of the discussions in Montreal plans were outlined which are now under consideration by the Commonwealth governments concerned and on which negotiations are continuing. The members of the Commonwealth left Montreal in agreement on the basic pattern which would be followed for the operation of the air services in which Canada is concerned. Trans-Canada Air Lines in due course should play its share in the establishment of Canadian services which will not only serve Canada's national needs for air connections with other countries, but will contribute fully to the development of air connections within the Commonwealth.

12. It was also agreed in Montreal, and has already been announced, that a Commonwealth Air Transport Council would be established to further the common objectives. This Council, which is an advisory body, will keep under review the progress and development of Commonwealth civil air communications; will serve as a medium for exchange of views and recommendations among Commonwealth nations on civil aviation; and will consider and advise on such civil aviation matters as any Commonwealth government may desire to refer to it. It will meet from time to time in the various countries represented on it. It is expected that the first meeting will be held in London some time during the summer of 1945.

C. THE CHICAGO CONFERENCE

13. Fifty-four nations were represented at the conference held in Chicago. At the outset, plans were submitted by Canada, the United Kingdom and the United States for the establishment of a permanent international air authority.

14. The Canadian proposals took the form of a revised Canadian draft convention. They represented the most detailed and most carefully prepared plan submitted to the conference. Basically this revised Canadian convention was the document which was tabled in the Canadian House of Commons in March, 1944. Certain changes had, however, been made.

(1) Canadian Proposals—Rate Control—Traffic Regulation

15. There had also been added certain principles covering the control of rates and of services. Rates were to be fixed in the first instance by the airline companies concerned on a route. If an interested government took exception to the rates established by the operators or if the companies failed to agree, the international organization was to have power to modify or establish rates. The rates established were so far as possible to permit the revenues of the most economical operator to cover the full cost of operation

and reasonable profit and were to be adjusted according to different characteristics and standards of service.

16. In respect of services, Canada proposed that any nation should have the right to at least one round trip per week on any international route commencing in that nation's territory. If its application showed more than one frequency a week to be desirable a decision would be within the discretion of the international authority. If the service attracted enough traffic its frequencies would be increased in accordance with an "escalator" formula which provided that a service operating with an average payload of more than sixty-five percent of capacity should have the right to increase its services. This formula was intended to stimulate improvements, development and healthy competition by providing that traffic, as a result of the free choice of the traveller, would flow to the most efficient operator; the operator who displayed efficiency would have the opportunity to expand his services.

(2) Misunderstandings of the Canadian Plan

17. When these proposals were presented in Chicago, certain misconceptions of the earlier Canadian proposals were clarified. It was pointed out that Canada did not propose international ownership of airlines, but rather international regulation by an international authority with powers analogous to those possessed by the United States Civil Aeronautics Board. Nor did the Canadian plan propose that the international authority should have any power to deal with such questions as whether airlines should be privately owned or government owned. It did not propose to interfere with the powers exercised by national licensing bodies which would continue to function as before, but which in regard to international services would deal with a single international authority rather than a large number of separate foreign governments. Canada believed that an efficient airline company would find it easier to comply with international regulations and to deal with a single international authority than to bargain with a great many separate nations in an attempt to overcome various national barriers to international air transport.

18. By reason of the presentation of this Canadian convention, and of careful preparation before the conference, as well as of a general recognition of prominence in the operation of air transport services, based upon its record in domestic and trans-Atlantic operation, Canada was recognized at Chicago from the outset as a major civil aviation power; in fact, as the conference developed and as the Canadian representatives put forward efforts to reconcile the divergent views of the United Kingdom and the United States, Canada filled the role of one of the three leading nations in the conference.

(3) United Kingdom Proposals

19. The United Kingdom plan was contained in a White Paper published by the United Kingdom government in October, 1944. In general, it represented views which the government of the United Kingdom had put forward the preceding year during the Commonwealth conversations. It suggested the establishment of an international authority to define international air routes, set the total number of services on any international route, and distribute them among the countries concerned, fix rates of carriage, license international operators, provide for arbitration and deal with technical matters of air navigation.

(4) United States Proposals

20. The proposals of the United States provided for the establishment of an international organization which was to concern itself with technical matters of air navigation and with economic problems relating to the operation of international air services. Its functions were to be limited to collection of information, study and review, and its powers were to be wholly advisory. In the technical field, it was, however, to attempt to achieve standardization of procedures and practices.

21. The United States also put certain other proposals before the conference at an early stage. These were a plan for an interim organization to function until a permanent body could be estab-

lished and a proposal that agreed standard clauses be incorporated in all future aviation agreements between states. The Canadian representatives knew that some time might elapse before a permanent organization could be established; hence a transitional body could serve a useful purpose in preparing the way for a permanent organization. They also recognized that so long as arrangements for international air services continued to depend upon special agreements rather than upon a multilateral convention, it would be desirable to adopt standard practices in these special agreements. However, achievement of a satisfactory permanent organization was of paramount importance to Canada, and the Canadian delegation felt that its greatest efforts should be concentrated upon reaching agreement on this point. This Canadian position was made clear at once, and it was generally accepted by the conference that transitional arrangements should be so framed that they would lead directly towards any permanent organization which might be agreed upon.

D. THE STANDARD CLAUSES RESOLUTION

22. As a result of the United States proposal for standard clauses in all aviation agreements, a resolution was incorporated in the final act of the conference, establishing such standard clauses. Canada has signed the Act containing this resolution, the main objectives of which were a reasonable equality in the operation of air services and the assurance of a fair chance to each nation desiring to operate air services. Signatory states have undertaken to refrain from including in aviation agreements specific provisions which grant exclusive rights to any other state or airline, and have undertaken not to make agreements excluding or discriminating against the airlines of any state. They have also undertaken to terminate any existing discriminatory or exclusive rights as soon as such action can be taken.

23. This can do much to remove the closed systems and preferential agreements which hindered the development of international air transport before the war. Nations of ill-will may still avoid the

spirit of the resolution; nevertheless, the unanimity with which these proposals were greeted in Chicago is a hopeful indication of a more equitable situation in regard to air agreements between nations in the future.

24. The standard clauses also deal with technical matters and the imposition of just and reasonable charges for the use of airports and other facilities. These charges may not be higher than those imposed on national aircraft engaged in similar international services.

25. The suggestion has been advanced that groups of nations might go even further in establishing additional standard clauses of a detailed regulatory nature to be incorporated in bilateral agreements, in order to provide a common system for control of traffic and rates. The Canadian government recognizes that this might be desirable if it were done on a truly international basis. Any suggestion, however, that a small and limited group of nations might agree among themselves on such additional standard clauses which would, in effect, provide for a rigid method of regulation of international air services, would result in the very thing which the resolution approved at Chicago was intended to prevent; that is, the development of closed systems which must eventually take on exclusive or discriminatory forms. Any such limited agreement would be likely to lead to the development of a bloc of nations and would eventually work detriment to cooperation in international air transport by provoking the formation of other blocs and undesirable rivalries.

E. THE PERMANENT CONVENTION

26. Prior to the conference there was general agreement that some international air organization must be established. While the majority of nations had not expressed their views upon the constitution or powers of such an organization the basic problems upon which difference was likely to emerge were known. These were as follows:

- (i) assuming a satisfactory degree of regulation of traffic and rates, what freedoms of the air could be granted in a multi-lateral convention;
- (ii) how, if at all, was regulation of traffic to be achieved; and
- (iii) how, if at all, were rates to be established?

27. Committees of the conference proceeded with discussion of all the questions, large and small, involved in the establishment of a permanent organization. Progress was slow at the outset, for reluctance to deal with basic points of difference was apparent so long as it was known that the nations which had submitted concrete proposals to the conference had not reached agreement among themselves. Some nine days after the conference began it became obvious that little further progress could be made in full committee unless the leading powers were agreed upon the approach to be used. As a result of initiative taken by Canadian representatives, the United States, the United Kingdom and Canada commenced a series of trilateral discussions in an attempt to solve the three main issues mentioned above. After a further eleven days of these special discussions, the three nations were close to a solution. Agreement had been reached upon the basic framework of a permanent convention covering virtually all features except regulation of traffic and of rates; on those matters proposals had been put forward which had gradually narrowed the gap between the United Kingdom and the United States views.

28. Accordingly, a draft of the permanent convention prepared by the three powers and based in large part on the Canadian draft convention was submitted by the three powers to the full conference for study; the sections on freedoms of the air, traffic regulation and special rights of certain United Nations had been omitted as they were still under consideration. The conference proceeded to careful consideration of this document. Meanwhile Canada continued through further meetings with the United Kingdom and United States representatives to press for solution of the points which remained outstanding. The efforts of the Cana-

dian representatives were unrelenting during the balance of the conference and they did not admit failure until the last meeting of the conference had taken place, some twelve days later. Unfortunately the United States and the United Kingdom did not come to common ground upon one point.

(1) The Differences over Regulation—The Freedoms

29. The story in brief of the differences over these matters is as follows. The Canadian convention contained Four Freedoms:

- (1) The right to fly across territory of other states without landing.
- (2) The right to land in other states for non-traffic purposes.
- (3) The right to put down in other states passengers, mail and cargo taken on in the territory of origin of the service.
- (4) The right to take on in other states passengers, mail and cargo destined for the territory of origin of the service.

To prevent misuse of these freedoms regulation of services and rates was to be placed in the hands of the proposed international authority.

(2) United States Modifications

30. Pointing out the great importance of intermediate "pick-up" traffic on any long air route as compared with traffic moving only to and from the country of origin, the United States representatives suggested that a fifth freedom be added, namely,—

"The right to take on in other states passengers, mail and cargo destined for the territory of other states and the right to put down at any point passengers, mail and cargo coming from other states."

They also suggested that the regulation of services and rates, which they agreed was desirable in order to prevent unfair and

uneconomic methods of competition, should be accomplished, not by giving the international authority power to regulate in accordance with certain principles, but by making the principles so far as possible automatic in their application. The principles would be of the nature of agreed rules of the game; each member of the organization would undertake that its airlines would abide by these rules; the international authority would collect and analyze the factual information necessary for the interpretation or application of the rules; the international authority would also, on the complaint of a member state, have the right to determine whether or not a state was in fact living up to its undertaking to see to it that its airline companies abided by the rules. Canada and the United Kingdom were prepared to accept these United States suggestions, it being understood that any state might reserve its position as regards the fifth freedom.

(3) Establishment of Rates

31. The question of rates did not provide any insuperable barrier. The Canadian convention had suggested that the establishment of rates be left in the first instance to the airline operators, with the international organization being given superior powers. This basis was accepted, and a draft article was agreed upon by the three powers and submitted to the conference as part of the draft convention.

(4) United Nations Article

32. Another article which was not included in the final convention but which Canada considered of importance and upon which no great difference of opinion existed related to the position of nations which had suffered from the war. If principles to govern the extent of the air services of each country had been agreed upon it was obvious that some nations which were in a position to initiate services immediately might, under the escalator clause, so expand their services that no room would be left for other nations which, as a result of war conditions, could not begin so promptly.

Accordingly an article known as the "United Nations article" provided that in these circumstances a nation which as a result of war conditions was delayed from taking up its share of traffic promptly, could enter the field at a later date. At that time other services already in operation on the same route would reduce or otherwise arrange their services to make room for the newcomer.

(5) Regulation of Services—Initial Allocation

33. The real difficulty lay in the principles to govern extent of services. The most important new feature of the Canadian proposals was the escalator system which provided that an operator who had achieved an average payload of sixty-five percent or more over a given period should be entitled to increase his services. The merit of this suggestion was recognized readily. Canada had not, however, dealt in detail with the initial allocation,—that is, the starting-point upon which any escalator clause would apply; nor had the Canadian plan gone into the detail of types of traffic to be taken into consideration in initial allocation or subsequent modification of services.

34. The United Kingdom held strongly to the view that regulation of services should be based upon "home traffic," that is, traffic originating in the homeland of the air service in question or travelling to the homeland of that service. This view led to complications in relation to the fifth freedom which the United States had suggested, since the fifth freedom covered intermediate pick-up traffic, as an addition to home traffic covered in the third and fourth freedoms.

35. As regards initial allocation, the degree of difference was relatively slight and would have been overcome had it not been for greater difference over another point. Fundamentally it seemed agreed that a route should be broken into divisions or sectors, and that the capacity of the air services of each nation should be established in relation to the amount of home traffic travelling over each of these divisions or sectors. Any nation would be entitled to enough services to carry one half of its home traffic.

(6) The Escalator Clause

36. Failure to reach agreement came finally over the escalator clause. The United Kingdom was of the opinion that the right of any nation to increase its services under the escalator clause should be based only on home traffic and that pick-up traffic should be excluded. Any other increase in services should be made only by bilateral agreement. This, it was suggested, would allow lesser regional services a fair chance of development; otherwise large through operators on long routes which obtained local traffic under the fifth freedom could expand their services to a point where regional services would have little chance for development. The United States representatives with equal sincerity believed that on the contrary, pick-up traffic gained under the fifth freedom must be considered under any escalator clause. They pointed out that on long air routes, domestic and international, it had been amply demonstrated that pick-up traffic was of great importance, particularly on those parts of the route furthest from the point of origin; and that without this pick-up traffic no service could expect to live and expand. Accordingly, the United States felt that the United Kingdom approach would prevent virtually any increases of service under the escalator clause and thus would prevent any reward for efficiency.

37. In order that the differences on these points might be understood by the other nations represented in Chicago, the United Kingdom and the United States circulated proposals for the missing articles. Canada also circulated proposals which were considered a reasonable reconciliation of United Kingdom and United States suggestions. The United Kingdom circulated a redraft of the Canadian compromise proposal. From study of these various drafts it is apparent that there was only a relatively small difference outstanding at this point. The Canadian plan had provided that the escalator clause should apply in the case of all traffic. The United Kingdom in its last draft proposed that, instead, escalation should apply automatically only on home traffic, that is, traffic under the third and fourth freedoms, but that it should be

within the discretion of the Council of the organization to decide whether fifth freedom traffic in addition should be taken into consideration. This is not a great difference. Nevertheless, this last small gap between the United Kingdom and the United States was not bridged. In consequence, freedoms of the air, provisions for establishment of rates and control of traffic capacity and the United Nations article were omitted from the convention because of failure to reach agreement on this one point.

(7) Canada's Policy—Continued Effort for Solution

38. Without minimizing the very real achievements of the conference, not only in the technical field but in the provisions for an interim and a permanent civil aviation organization, the Canadian government regrets that no agreement was attained on these questions. Canada's position throughout the three-power talks was that of an intermediary attempting to bring the United Kingdom and the United States to a common point of view. Canada could have reached agreement with either. Both United Kingdom and United States representatives displayed desire to reach agreement and they adjusted so many of the points between them that in the end the gap that remained was small. Their genuine desire to solve the issues, in realization of the important effect on future international meetings which success must have, accomplished much but did not accomplish enough.

39. Canada is not accepting this situation as permanent or final. Misunderstanding and mistrust have led to unfortunate exaggerations of the differences that remained at Chicago. They appeared slight in the end to the Canadian representatives. All the nations represented in Chicago expressed an urgent desire to have the difficulties overcome. The conference by formal resolution has requested the interim organization to continue study and examination of the various proposals on these subjects with a view to producing satisfactory principles which can ultimately be incorporated in the permanent convention. There must be some method of regulation, some spelling out of criteria to govern the operation of inter-

national air services if the world is to avoid bitterness and chaos in international air relations, and Canada will continue its efforts to achieve a solution, assured of the ready and willing support of a great majority of the other participants.

(8) The Permanent Convention—Objectives

40. The permanent convention, as finally agreed upon, covers the general field of air navigation and also deals with matters of commercial air transport. The permanent international agency which is to be set up will be known as the International Civil Aviation Organization. States agree not to use civil aviation for purposes inconsistent with its objectives which are:

- (a) Ensure the sane and orderly growth of international civil aviation throughout the world;
- (b) Encourage the arts of aircraft design and operation for peaceful purposes;
- (c) Encourage the development of airways, airports and air navigation facilities for international civil aviation;
- (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- (e) Prevent economic waste caused by unreasonable competition;
- (f) Ensure that the rights of contracting states are fully respected and that every contracting state has a fair opportunity to operate international airlines;
- (g) Avoid discrimination between contracting states;
- (h) Promote safety of flight in international air navigation;
- (i) Promote generally the development of all aspects of international civil aeronautics.

41. Charges imposed for the use of airports and other facilities are not to be higher than those paid by national aircraft engaged

in similar operations, and all such charges are to be communicated to the International Aviation Organization which, upon representation by an interested party, may report upon and make recommendations as to these charges. Contracting states agree to facilitate international flights and prevent unnecessary delays. Each contracting state undertakes to provide airports, meteorological and other air navigation facilities following standards and practices established under the convention, and to put into operation appropriate standard systems of communications, codes and markings.

(9) The Technical Annexes

42. Specific regulations covering the field of air navigation which is dealt with generally in the convention are included in a number of technical annexes. These technical annexes were in the first instance presented by the United States and referred to a number of technical sub-committees. Canada brought forward certain proposals for additional annexes which were accepted. The technical experts of Canada, the United States and the United Kingdom played the major part in the work of these sub-committees which by the end of the conference had prepared an extensive group of draft annexes which are intended ultimately to become part of the permanent convention, thus moving toward a highly desirable standardization of practices. The annexes combine the best features of practices already evolved in various countries and cover such matters as standards of airworthiness for aircraft, standards required for pilots and technical personnel, meteorology and weather reporting, radio and communications, airports and ground facilities. The conference in carrying forward this work made a great contribution to international aviation; in this respect its achievements were considerable.

43. Similar work had been done before the present war, but the great changes and improvements in wartime aviation required that this work be brought up to date. Moreover, no single and agreed system of international air navigation had existed in the

prewar years. Two conventions covering the field had been signed, one the Paris Convention of 1919 and the other the Havana Convention of 1928. Neither had been universal in scope. Now, for the first time, this has been achieved, and the work of the Chicago conference will in due course take the place of the Paris and Havana conventions. Moreover, it has been provided that the technical annexes may be modified and kept up to date constantly and with ease by a special process of amendment.

(10) Filing of Information

44. The part of the convention dealing with international air transport provides that each state shall file traffic reports, cost statistics and financial statements with the organization. All agreements in existence on the coming into force of the convention and all new agreements are to be registered with the organization.

(11) Provision of Airports

45. The convention sets out a procedure for provision of airports and other air navigation facilities by member states where the financial burdens involved may be too great for any single state. Each state has the right to designate the route to be followed within its territory by any international air services and the airports to be used. If the airports and other facilities are not adequate, the Council may consult with the state directly concerned to find means of remedying the situation. Any state may make arrangements with the Council for the provision of facilities under which costs will be met wholly or in part by the organization.

(12) The Assembly

46. The organization is to be composed of an Assembly, on which all member states will be represented and which is to meet annually. Its decisions are to be taken by a majority of the votes cast except in the case of amendments to the convention; a majority of the member states is required to constitute a quorum. The Assembly will choose the states to be represented on the Council, will act upon the reports of the Council or matters re-

ferred to it by the Council, will vote on the annual budget and financial arrangements of the organization, deal with amendments of the convention and with any other matters not specifically assigned to the Council.

(13) The Council

47. The Council, which is to be chosen every three years, is to be composed of the representatives of twenty-one states designated by the Assembly, in accordance with the principles mentioned below in describing the election of the first Interim Council. No representative of a contracting state on the Council may be actively associated with the operation of or financially interested in international air services. It will elect its own President.

48. Decisions of the Council require the approval of a majority of its members. Any contracting state may participate without a vote in the consideration by the Council or its committees of any questions especially affecting the interests of that state. No member of the Council may vote on a dispute to which it is a party. These particular provisions mean that no state is above the law, that no state may judge its own case, and that no state may be debarred from presenting its own case. They represent a major safeguard for the position of smaller and intermediate powers necessary to the effective working of any system of true international co-operation.

49. The Council is to collect, examine and publish information regarding air navigation and the operation of air services, including operational costs and subsidies. It will consider any matter relating to the convention which may be referred to it by a member state, and report any infractions of the convention or any failure to carry out recommendations or determinations of the Council. Where a state fails to take appropriate action after notice of infraction, the infraction is to be brought to the attention of the Assembly.

50. The Council is to set up an Air Transport Committee of its own members which will deal with the operation of international

air services, and an Air Navigation Commission chosen from persons nominated by member states to deal with technical matters. The Council is also to conduct research on aspects of air navigation which are of international importance, to study matters affecting the organization and operation of international air transport, and to investigate and report, at the request of any member state, upon any situation impeding aviation development.

(14) Finance

51. The expenses of the organization are to be dealt with in accordance with a procedure to be established by the Assembly which may also suspend the voting power of any state failing to discharge its financial obligations.

(15) Security

52. The Canadian government has always emphasized the importance of international air transport in relation to world security. The convention provides that the Assembly may, in respect of air matters directly affecting world security, enter into arrangements with any general organization set up to preserve world peace, while the Council may enter into special arrangements with other international bodies.

(16) Settlement of Disputes

53. One of the most important features of the convention is the part dealing with disputes and default. In the event of any disagreement between member states relating to the interpretation or application of the convention, the dispute is to be decided by the Council, whose decision is to be binding unless reversed on appeal to the Permanent Court of International Justice or to an arbitral tribunal set up for the purpose. The decision of the Permanent Court or the arbitral tribunal will always be final and binding. Member states undertake not to allow the operation over their territory of any airline which has failed to conform with a decision reached under this procedure.

(17) Amendments

54. Amendments to the convention must be approved by a two-thirds vote of the Assembly and come into force in respect to states ratifying the amendments when ratified by a number of states to be specified by the Assembly but in any case not less than two-thirds of the total number of member states. If the amendment is of major importance, the Assembly may provide that if a state fails to ratify within a specified period after the coming into force of the amendment, then that state shall cease to be a member of the organization. Amendments to the annexes become effective within three months after submission to states unless in the meantime a majority of the states register their disapproval.

55. It is readily apparent to anyone studying this convention alongside the Canadian draft convention that the permanent convention, if not in exact form, then in substance is taken in great part from the Canadian convention. Canada has signed the permanent convention, and the government intends to request parliamentary approval for ratification.

F. THE INTERIM AGREEMENT

56. It was appreciated that some time must elapse before the permanent convention could come into force; the matters with which the permanent convention deals are of such importance that governments must in most cases refer them to national legislative bodies for approval. Delay, however, until a permanent convention had come into force, would open the door to chaos in the meantime and disregard the opportunity of doing useful preparatory work and gaining valuable experience for the permanent organization. Accordingly, an Interim Civil Aviation Organization is to be established. This organization and the agreement by which it is established have the same general form as the permanent organization and the permanent convention. Several important features such as compulsory settlement of disputes have been omitted in order to make it possible for governments to accept the Interim

Organization easily so that it may be set up at an early date, presumably this year.

57. The Interim Organization is to remain in existence until the permanent convention has come into force, or until another international aviation conference has agreed on other arrangements, but in no case for more than three years. It is to become effective when accepted by twenty-six states. Canada has signed the interim agreement, and the Canadian government was the first to notify acceptance of it to the United States.

(1) Location in Montreal

58. The conference selected Canada as the seat of the Interim Organization. At its last meeting the Interim Organization will in turn choose the seat for the permanent body. Meanwhile Canada is making plans to provide the necessary facilities in Montreal, which has seemed the most suitable location, all things considered.

(2) Choice of the First Council

59. The first Council of the Interim Organization was also elected at Chicago in accordance with principles embodied in both the permanent convention and the interim agreement; under these principles, the Council, which is to have twenty-one members, must give adequate representation:

- (a) to the principal states of chief importance in air transport;
- (b) to those principal states not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and
- (c) to those principal states not otherwise included whose election will ensure that all major geographical areas of the world are represented.

This choice of criteria involves substantial recognition of the functional theory which the Canadian government has frequently

advanced in respect of national representation on the executive committees of international bodies.

60. The Council may prove rather large, and greater efficiency might have been achieved without interfering with fair representation by a smaller Council. Be that as it may, a Council of twenty members has been chosen and a place has been kept vacant for the U.S.S.R. should it wish to participate. Canada has been elected to membership on the Council, receiving the highest number of votes among states elected under the second category mentioned above; that is, providers of facilities.

G. THE "FREEDOMS" AGREEMENTS

61. Two supplementary agreements were prepared in Chicago; the Air Transit Agreement, commonly known as the Two Freedoms Agreement, and the Air Transport Agreement, commonly known as the Five Freedoms Agreement. When it became apparent that, through failure to achieve a procedure for regulation of routes and services, no freedoms of the air could be included in the convention itself, it was suggested that separate documents be prepared for signature by those states willing to grant freedoms of the air even without effective regulatory measures. Since it was clear that only a small number of nations would, in these circumstances, grant five freedoms, but a larger number might be prepared to go a smaller distance, two agreements were prepared, one granting the five freedoms of the air, from transit to full international commercial outlet, and a second containing only the first two freedoms, transit and non-traffic stop. It is provided in both these agreements that in the event of a dispute arising under either, settlement must be made under the provisions governing settlement of disputes in the permanent convention. The International Civil Aviation Organization thus is charged with the additional responsibility of settling disputes which may arise under these two agreements.

62. Nations granting the first two freedoms have the right to demand reasonable commercial service from the airlines using their

facilities. Moreover, none of the freedoms is to be exercised in a manner which will work injustice or hardship upon any nation. Interpretation of these principles will be left to the Council in case of difficulty or dispute. The responsibility is both broad and substantial.

63. The Canadian view of these "freedoms" arrangements was based on the position the Canadian government had always taken; that any extensive granting of freedoms of the air without effective regulation would be likely to benefit some states at the expense of others and would be likely to cause chaos and ill-will. Lack of regulation would constitute a threat to world security. At the same time Canada realized that in the prewar world certain nations used their rights of sovereignty over the air in a manner which impeded the development of air services; if international air transport is to develop effectively there must be a reasonable opportunity for airlines at least to operate across the territory of other nations. While the Canadians would have preferred some measure of control to accompany even this, it was stated at the outset in Chicago that regardless of the outcome of the conference, Canada would not pursue an obstructive policy. Accordingly Canada has displayed its willingness to assist in opening the airways of the world by adhering to the two freedoms agreement. By not adhering to the five freedoms agreement, however, the Canadian government retains full control over all rights to pick up and set down traffic in Canada. The United Kingdom and the United States also have granted the two freedoms throughout their territories, home and colonial.

H. CANADA-UNITED STATES ARRANGEMENTS

64. Former arrangements for air services between Canada and the United States were contained in exchanges of notes between the two governments in 1939 and in 1940. In these notes the principle of reciprocity was recognized, and trans-border routes were divided between the two countries so that each country was given the sole right to operate services on certain routes. Canada has operated one service into the United States (Toronto-New

York), and the United States has operated nine services into Canada. While the arrangement superficially has appeared inequitable to some, in reality considering the circumstances in which it was made it was not unfair at the time.

65. A Canadian delegation met with United States representatives in New York on January 25th and 26th and agreed upon new arrangements for Canada-United States air services. These arrangements have been incorporated in an exchange of notes between the two governments. The exchange of notes is based upon the standard clauses for bilateral agreements agreed upon during the Chicago conference, described above.

66. The new arrangement maintains the principle of allocation of routes on a geographical basis between the two countries. Existing routes are confirmed; that is, no change is made in the existing pattern of division, so that Canada will retain sole rights on the through run from Toronto to New York, while the United States may continue to operate the services which it at present operates. On the other hand, a number of new routes has been added, and has changed the overall ratio considerably, with the result that there will be roughly two United States services for one Canadian service crossing the border.

67. The new arrangement covers services from Canada into the United States and Alaska. Canada has achieved a much more widespread pattern of routes from coast to coast and will have the right under the new arrangement to operate services into the United States to eight different cities. The United States, on the other hand, will have the right of entry for some fifteen services into ten Canadian cities. No service operated by the one country may, however, on a single flight serve more than one city in the other country.

68. The United States government will designate United States airlines to operate the services allocated to it. The Canadian services will be operated by Trans-Canada Air Lines. The services will be established as soon as equipment and men are available

and the demands for war become sufficiently lessened to permit expansion.

69. The Annex to this new agreement reads as follows:

The airlines designated by the Government of the United States may operate on the routes:

Boston	-	-	-	-	-	Moncton
Boston	-	-	-	-	-	Montreal
New York or Boston	-	-				Quebec
New York	-	-	-	-	-	*Montreal, Ottawa
*(Provided that Montreal and Ottawa shall not be served on the same flight.)						
Washington	-	-	-	-	-	*Montreal, Ottawa

*(Provided that Montreal and Ottawa shall not be served on the same flight, and that the last point touched in the United States, if it be other than Washington, shall lie east of the 77th meridian.)

Buffalo	-	-	-	-	-	Toronto
Fargo	-	-	-	-	-	Winnipeg
Great Falls	-	-	-	-	-	Lethbridge
Seattle	-	-	-	-	-	Vancouver
Seattle	-	-	-	-	-	Whitehorse
Fairbanks	-	-	-	-	-	Whitehorse

In the case of the route between Buffalo and Toronto the service may, at the election of the United States Government, be rendered by two airlines. In each of the other cases service by a single airline only will be authorized.

The airlines designated by the Government of Canada may operate on the routes:

Halifax	-	-	-	-	-	Boston
Toronto	-	-	-	-	-	New York
Toronto	-	-	-	-	-	Cleveland

Toronto	-	-	-	-	-	Chicago (No stop will be made on this route at any Canadian point within 40 miles of Detroit.)
Port Arthur	-	-	-	-	-	Duluth
Victoria	-	-	-	-	-	Seattle
Whitehorse	-	-	-	-	-	Fairbanks

With respect to the routes between Toronto and Cleveland and Toronto and Chicago no through services will be operated from either point in the United States to points lying beyond the territorial limits of Canada. A single airline will be authorized for each of the foregoing routes.

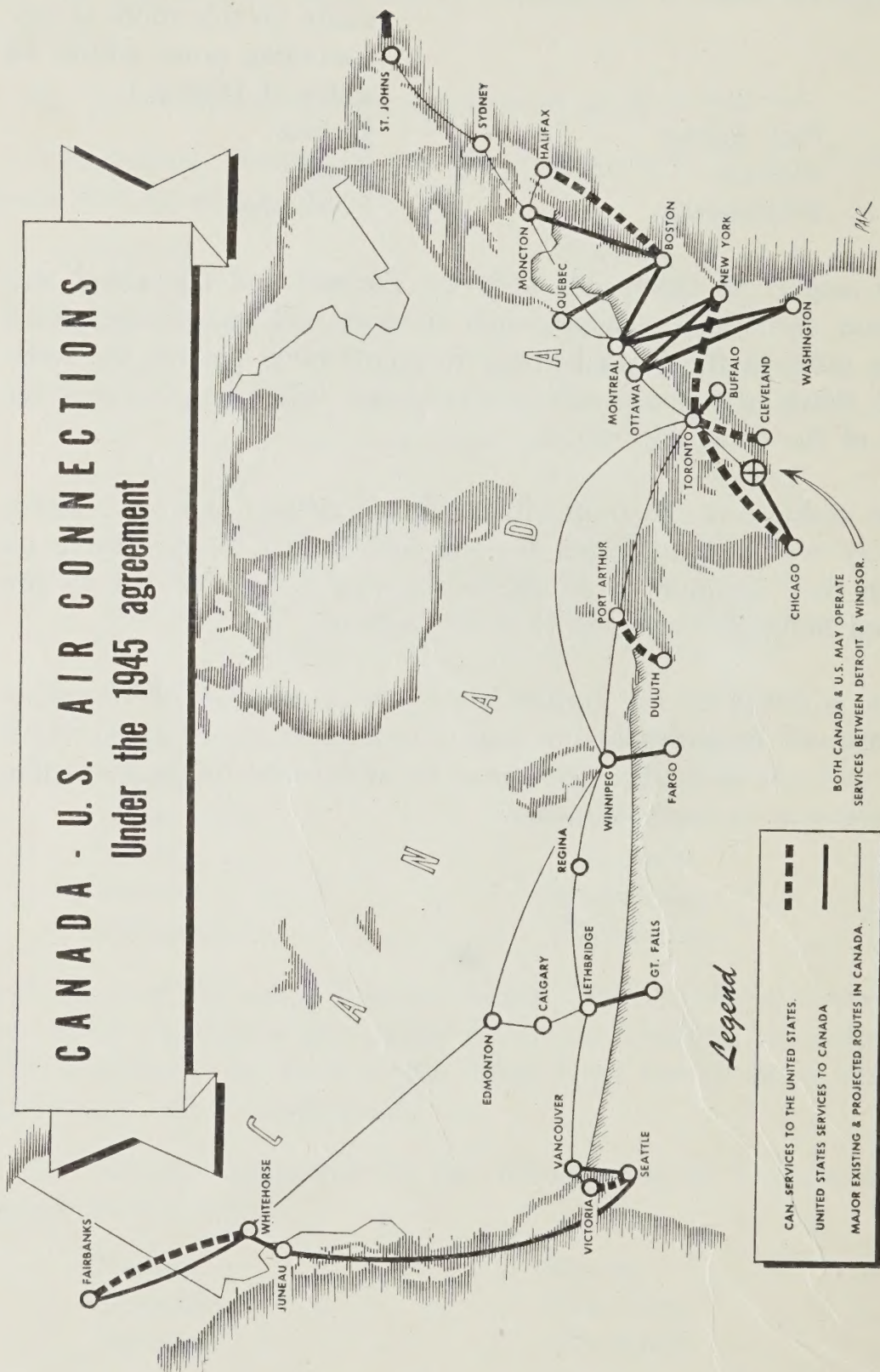
In addition to the routes listed above, airlines of United States registry will be authorized to stop in Windsor on any route on which they are now or in the future may be authorized by the United States Government to serve Detroit.

In addition to the routes listed above, airlines of Canadian registry will be authorized to stop in Detroit on any route on which they are now or in the future may be authorized by the Canadian Government to serve Windsor.



CANADA - U.S. AIR CONNECTIONS

Under the 1945 agreement



Legend

- CAN. SERVICES TO THE UNITED STATES.
- UNITED STATES SERVICES TO CANADA
- ... MAJOR EXISTING & PROJECTED ROUTES IN CANADA.

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